III. DEFINITIONS - Part 9553.0020

This rule part defines words and phrases that have a meaning specific to parts 9553.0010 to 9553.0080, that may have several possible interpretations, or that need exact definitions to be consistent with statute. Terms used in a manner consistent with common use in the mental health or human service fields are not defined unless a definition is necessary to clarify the rule. The definitions are needed in order to provide a common frame of reference and understanding for those charged with the responsibility of administering the rules and those obligated to comply with the rule parts.

Subpart 1. Applicability. This provision is needed to clarify that the definitions apply to the entire sequence of parts 9553.0010 to 9553.0080.

Subp. 2. "Addition." The definition is necessary to clarify what is meant by "addition" because the term is frequently used in part 9553.0060 relating to the determination of the property-related payment rate. Questions are often raised regarding the treatment of a physical structure which has been expanded or enlarged. It is reasonable to use a single term to define such alterations to the structure.

Subp. 3. "Applicable credit." This concept is essential to the determination of allowable costs. Applicable credits are used to reduce the costs to be claimed by the facility. The definition is necessary in order to clarify the provisions of part 9553.0035, subp. 4. It is reasonable to define the term as "adjustments or income which reduces the facility's costs" in order to insure that the costs reimbursed to the facility by the Medical Assistance program are net costs.

Subp. 4. "Capacity days." This definition is necessary because capacity days are used in calculating the property-related cost payment rate and because the providers must have exact definitions of elements of the formula in order to understand the calculations. It is reasonable that capacity days be equal to the number of days in the reporting period multiplied by the number of the facility's licensed beds because this represents the maximum number of resident days possible during the reporting year.

Subp. 5. "Capital assets" is the term used to represent all depreciable assets. The use of this term allows the commissioner to refer to the common attribute without repetitive listing.

Subp. 6. "Capital debt". The term needs to be defined so that these debts may be distinguished from other debts such as working capital and bad debts because each is subject to different reimbursement limits. It is reasonable to describe and classify these debts in this manner because the debts, if any, are common to capital assets. Also the use of this term allows the commissioner to refer to the common attribute without repetitive listing.

Subp. 7. "Capital debt interest expense". This term denotes interest expense on the defined term "capital debt." The definition is necessary because different reimbursement limits exist for each type of interest expense.

Subps. 8 and 9. "Class A and Class B beds". These terms are defined to clarify that Class A beds are beds licensed to be occupied by persons capable of self preservation while Class B beds are for persons not capable of self-preservation. Conversion from Class A to Class B beds, as provided

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for in Part 9553.0075 may result in increases in staffing and sometimes modifications to the physical plant. It is necessary and reasonable to distinguish between the two types of beds because different costs may be associated with the two different types. The delineation is as specified in Minnesota Rules, parts 4665.0500 and parts 9525.0210 to 9525.0430

Subp. 10. "Commissioner" is necessarily defined in order to avoid confusion with other public officers titled commissioner who hold responsibilities other than those of the commissioner of the Department of Human Services. It is reasonable to limit the use of the term to the commissioner of the Department of Human Services because the commissioner of the Department of Human Services is responsible for the administration of these rule parts.

Subp. 11. "Cost categories". This definition is necessary to prevent confusion with other terms qualified by the use of the word "cost" and which bear a similarity to terms used in Medicare regulations or the regulations of other states such as "cost center" or "cost class". The definition is consistent with the way the term has been used in Minnesota Rules, parts 9549.0010 to 9549.0080.

Subp. 12. "Cost report." This definition is necessary because providers are required to submit a cost report to the Department so that the department can identify and allocate costs and determine their allowability. It is reasonable to define the scope of the cost report to clarify what must be prepared and submitted by the provider and to provide for the uniformity required by Minnesota Statutes, sections 256B.30 and 256B.48 and United States Code, Title 42, Section 447.252 (f).

Subp. 13. "Department." The definition of "Department" is necessary to clarify that the specific department referred to in the rule parts is the Minnesota Department of Human Services. Substituting "department" for the full name of the department is a reasonable way of shortening the rule parts.

Subp. 14. "Depreciable equipment." This definition is necessary because sometimes a piece of equipment can be capitalized and depreciated over its estimated useful life. Some pieces of equipment, however, may be expensed in the year of purchase. Therefore, it is necessary to clarify which type of equipment must be depreciated under these rule parts. It is reasonable to define this term by reference to the depreciation guidelines which identify specific types of depreciable equipment in order to provide specific examples which can be used by the providers and the department in determining whether a particular piece of equipment should be depreciated.

However, depreciable equipment is not limited to only those items which are included in the depreciation guidelines because the depreciation guidelines do not contain a comprehensive listing of all major movable equipment that might be used in an ICF/MR.

Subp. 15. "Depreciation guidelines." This term refers to "The Estimated Useful Lives of Depreciable Hospital Assets" issued by the American Hospital Association in 1983. The definition of the term is necessary to clarify what guidelines are to be used. These guidelines are incorporated by reference. The purpose of the incorporation is to use those guidelines to classify assets such as attached fixtures (fixed equipment), land improvements, buildings, or depreciable equipment (major moveable equipment). The guidelines contain an extensive listing of various types of

improvements, buildings, fixtures and equipment. It is reasonable to use these guidelines because they have been recently established, relate to the type of equipment found in an ICF/MR, and are generally accepted in the health care field.

Subp. 16. "Desk audit." This term is defined to avoid confusion with the other type of audit used by the Department, the field audit. "Desk audit" means the establishment of the payment rate based upon the commissioner's review and analysis of the required reports, supporting documentation, and work sheets submitted by the provider. The definition is reasonable because it establishes the nature of the commissioner's review and analysis necessary to establish the initial prospective payment rate. This is the same rate establishment process followed in Minnesota Rules, parts 9549.0010 to 9549.0080 for nursing home reimbursement. The same group of auditors is involved in setting rates for nursing homes and ICFs/MR. For reasons of administrative convenience it is reasonable to define this term in the same manner as it is defined in Minnesota Rules, parts 9549.0010 to 9549.0080 (Rule 50).

Subp. 17. "Direct cost". This definition is necessary in order to establish those costs which can be identified within a specific cost category without the use of allocation methods. This direct identification is necessary in some cases to insure that the reimbursement limits set by these rule parts are not circumvented by allocating costs to nonlimited cost categories. The definition is reasonable because it is a common method of direct identification of costs used in the accounting field.

Subp. 18. "Equity." This definition is necessary because equity is an accounting term which can have different meanings in different circumstances. Its meaning in the context of this rule is reasonable because it represents the extent to which the facility's capital assets are unencumbered by debt. This definition provides a uniform method by which the facility's "equity" can be measured relative to all other facilities. It is reasonable to exclude debt disallowed due to a sale because the sale transactions are ignored for reimbursement purposes in accordance with the Deficit Reduction Act of 1984.

Subp 19. "Facility" is defined to avoid possible misunderstanding as to the nature of the vendor for which Medical Assistance program funding is available. It is reasonable to limit payments under this program to ICFs/MR which are licensed and certified because a facility must be licensed and certified in order to receive Medical Assistance payments and because it is easy to ascertain if a facility meets these criteria. It is reasonable to define the term by referring to the statutes so that the rule parts will conform to the statutes if the statutory definitions are amended. This is also a reasonable way of shortening the length of the definition and avoiding unnecessary duplication of statutory language.

The term "intermediate care facility for the mentally retarded" is a generally accepted term used by federal and state governments and providers. For example, the term is used in United States Code, title 42, sections 1396, et. seq., Code of Federal Regulations, title 42, section 442.400 et seq., Minnesota Statutes, section 256B.501 and other department rules including part 9525.1210 and parts 9525.0015 to 9525.0145. Use of the acronym "ICF/MR" is a reasonable way to shorten the length of the rule parts.

Subp. 20. "Field audit." This definition is necessary to distinguish field audits, which are on-site examinations, from the desk audit which is conducted in the department. It is reasonable to define on-site examinations as "field audits" because this use of the term is consistent with the way the term is used in other reimbursement rules in the Department. Also auditors and providers are familiar with this definition.

Subp. 21. "Fringe benefits" are defined because the costs for these benefits must be reported separately in the annual cost report. It is reasonable to distinguish those operating costs considered fringe benefits from salaries, fees, and wages to assist in identifying allowable costs referred to in the rule parts and to avoid confusion in reporting.

Subp. 22. "Funded depreciation". This is a financial concept that is used to denote a portion of the annual depreciation allowance set aside for future financial needs such as principal payments on debts and replacement of capital assets. It is necessary and reasonable to define the term in order to avoid confusion with other forms or uses of depreciation, and because the rule parts govern what can be done with these funds.

Subp. 23. "Historical capital costs" is necessarily defined to identify past capital costs of facilities, and the dates are necessary to clarify how capital assets will be subjected to the various limits in these rules. The objective, as stated in the legislative auditor's report, is to direct scarce state resources to areas of resident care rather than to administrative and property-related areas. This definition is reasonable because it helps accomplish that objective. The definition is also consistent with the actions taken by the federal government in the Deficit Reduction Act of 1984.

The definition, with the exception of acquisition of new capital assets for use by the facility, results in no increase in the asset base. In order to accomplish the objective, as stated in the legislative auditor's report, it is reasonable that the asset base of facilities not increase merely because of a sale. An increase in cost due to a sale adds nothing in the way of quality care, therefore, not recognizing the costs associated with the sale serves to direct scarce resources to resident care related items.

Subp. 24. "Historical operating costs." This definition is necessary to identify the operating costs incurred by a facility during the reporting year. These costs are used to establish the prospective payment rate. Parts 9553.0010 to 9553.0080 are intended to govern costs incurred, reported and allowable. Because establishing a historical operating cost base is essential to these activities, it is reasonable to clearly define what historical operating costs are.

Subp. 25. "Indirect cost." This definition is necessary to distinguish this term from direct cost (see above). It is necessary to define this term to support the cost reporting and allocation method in the rule. This definition is reasonable because costs incurred for activities that benefit more than one cost category cannot be directly identified.

Subp. 26. "Land." This definition is necessary because only the cost of land which is devoted to resident care is reimbursable under these rule parts. It is reasonable to only include land necessary in the provision of resident care because the purpose of the Medical Assistance program is to provide resident care so, therefore, land associated with other purposes should not be an allowable cost under this program.

Subp. 27. "Land improvement." This definition is necessary to clarify what type of land improvements the provider can receive reimbursement for under these rule parts. It is reasonable to limit land improvements to those the provider is responsible for replacing because the purpose of these rule parts is to provide reasonable reimbursement to providers for costs they must incur.

Subp. 28. "Leasehold improvement." This definition is necessary because leasehold improvements are one component of capital assets and the cost of some of these improvements is reimbursable under these rule parts. This definition is reasonable because it is consistent with the definitions of the term used in the accounting field.

Subp. 29. "Medical Assistance Program." This definition is necessary and reasonable to prevent confusion about the reimbursement source referred to in these rule parts. Specific federal regulations and state statutes are cited so that people affected by the rule may have specific information on the federal and state provisions which govern this program.

Subp. 30. "Necessary service." This definition is necessary to provide a standard by which to determine if the services provided by a facility should be reimbursable. A service is not considered necessary by a prudent manager unless there is evidence that the service must be performed in order to operate the facility. It is reasonable to encourage prudent management by defining necessary services in this way and only reimbursing for necessary services. With limited resources available it is essential that the department only reimburse for costs that must be incurred. This requirement is also consistent with the enabling legislation (Minnesota Statutes, section 256B.501, subdivision 2).

Subp. 31. "Payroll taxes." This definition is necessary to clarify for providers and department auditors what costs are to be classified as payroll taxes to prevent confusion. This definition is reasonable because the costs listed are commonly classified as payroll taxes.

Subp. 32. "Physical plant" is a term descriptive of the building or buildings of a facility including attached fixtures. This definition is necessary to distinguish the buildings and attached fixtures from the other components of the facility's capital assets. The term is limited to those structures in which a program licensed to serve persons with mental retardation is located, in order to avoid the possible misapplication of the term to structures owned by the provider which are not related to resident care. It is reasonable for reimbursement purposes to limit the definition to buildings related to resident care because the rule is meant only to reimburse the cost of necessary services. The definition is also consistent with the definition of physical plant used in other department rules such as part 9525.0015 to 9525.0145.

Subp. 33. "Private paying resident." Because the Medical Assistance rate is limited by the private paying residents rate under part 9553.0070, it is necessary to identify private paying residents for purposes of comparing rates. The definition is reasonable because it identifies as private paying all residents whose care is not paid by public funds.

Subp. 34. "Program." This definition is necessary to distinguish those activities whose costs must be reported as program operating costs under part 9553.0040 from other operating costs. It is reasonable because it

identifies functions and activities necessary for the care of persons with mental retardation which are governed by the Department's licensing rule for ICFs/MR and the United States Code of Federal Regulations.

Subp. 35. "Program director." The definition is necessary to distinguish personnel who perform program functions from administrators. This distinction is necessary because the rule specifies limits for top management compensation and the program director function should not be classified as top management for purposes of applying the limits in part 9553.0040. It is reasonable that the program director function not be considered top management because the function is directly related to the provision of program services and not to the overall administration of the facility.

Subp. 36. "Provider." Provider is defined to clarify who is responsible for the operation of the facility and for claiming reimbursement under parts 9553.0010 to 9553.0080. It is also necessary to clarify that these parts do not govern providers of other services or providers who do not receive reimbursement under these rule parts. This definition is reasonable because the legal entity defined as provider is the only entity that contracts with the Medical Assistance program and is authorized to receive reimbursement.

Subp. 37. "Provider group." This definition is necessary because some provisions of these rule parts are applicable only to a provider who operates more than one facility. To fairly and consistently apply these provisions, a clear definition of provider group is needed. It is defined so that there will be a commonly understood encompassing term to be used to refer in a concise manner to the organizations specified in this definition. This definition is reasonable because it is a logical expansion of the term "provider."

Subp. 38. "Rate year" is defined to establish a separate time period from the reporting year. The separation of the rate year from the reporting year is necessary in order to insure a consistent historical base for all providers, improve the ability of the providers and the Department to forcast budgets, and to automate the system. A similar separation was mandated by the legislature for the nursing home rate setting system. The distinction is reasonably made to allow for an adequate time period to prepare and submit reports preparatory to the determination of a payment rate.

Subp. 39. "Related organization." This definition is necessary to enable providers and the department staff to determine if an organization is considered related to the facility for which a rate is requested. This distinction is necessary because certain provisions of these rule parts apply to costs incurred by or from related organizations. To apply these provisions fairly and consistently, it is necessary to have a clear definition of the term. The definition is a reasonable one because it is similar to the definition of related organization used in Rule 50 and in CFR by the Health Care Finance Administration to govern Medicare reimbursement of allowable costs, 42 CFR § 405.427 and by the Department in rule parts 9549.0010 to 9549.0080.

Subp. 40. "Repair." This definition is necessary to distinguish those costs which are needed to restore or maintain an existing capital asset from those costs which are incidental or cosmetic. It is reasonable to expect that a repair will improve the condition of the item being repaired or maintained.

Subp. 41. "Replacement." This definition is necessary to distinguish replacements from repairs. Replacement costs subsequently have an effect on the determination of the property-related payment rate. The definition is consistent with the definition in rule parts 9549.0010 to 9549.0080.

Subp. 42. "Reporting year". January 1 to December 31 is defined as the reporting year. It is necessary to establish a common reporting year for all facilities in order to insure equitable treatment of facilities when indices and limits are applied. The common reporting year also improves the historical information available to the department which is necessary in order to monitor expenditures. Both the facility and the department benefit from better ability to forcast budgets and to take advantage of automated systems. Since 65 percent of facilities already had a January to December reporting year, it is least disruptive to shift the other 35 percent to this reporting year. The reporting year must also be defined in order to distinguish this time period from the rate year (see above). It is reasonable to use the time period from January 1 to December 31 as the reporting year, because it creates a time lag between the reporting year and the rate year which is sufficient to allow providers to submit the cost reports and the Department to perform the desk audit.

Subp. 43. "Resident day." This definition is necessary to clarify what is meant by "resident day" for purposes of calculating a rate under parts 9553.0050 and 9553.0060. The definition provides a common frame of reference for providers and Department staff as a measurement or unit of service provided. It is reasonable to limit the definition to days on which services are rendered and billable or days for which a bed is held and billed for reimbursement purposes because, as specified in part 9553.0036, subp. 15, goods or services must be actually provided in order to be used for rate setting purposes. Although services are not provided when a bed is held, a held bed cannot be used for other purposes and therefore the provider should be reimbursed for holding the bed. It is necessary to allow held beds to insure that a resident who is hospitalized, on vacation, or otherwise temporarily absent can return to the facility.

Subp. 44. "Respite care" is defined so that those facilities which provide short-term care to eligible persons with mental retardation can identify the costs associated with providing that care. It is necessary to exclude institutional providers because the purpose of offering respite care services is to provide needed relief to the informal caregivers not institutional caregivers. The definition is reasonable because it is consistent with the definition in parts 9525.1800 to 9525.1930 which govern reimbursement for respite care under the Medical Assistance Program.

Subp. 45. "Top management personnel" is defined in order to identify persons who perform substantial executive functions whose compensation is included in the administrative cost category and is subject to the top management compensation limitation. The purpose of the definition is to identify those individuals who perform the duties and fulfill the functions of top level managers on a daily basis. It is reasonable to include also those individuals who perform these responsibilities, but may not have one of the titles denoted because otherwise it would be possible to avoid the limits by simply changing titles of staff. The whole area of top management compensation has been a complex and hotly contested issue for the providers and department auditors for years. For a more detailed discussion of the issues and problems, see part 9553.0030 of the SNR.

Subp. 46. "Total payment rate." This term defines a composite of rates. It is necessary to identify the component parts of the total rate to specify which costs and expenses are being reimbursed. It is reasonable to define the sum of the payment rates as the total payment rate.

Subp. 47. "Useful life." It is necessary to define this term because it is one of the factors involved in determining the allowable depreciation expense using the straight line method as stipulated in part 9553.0060, subpart 1. It is reasonable to define useful life as a length of time as opposed to some measure of units of output, because the straight line method of depreciation is being used to determine depreciation expense.

Subp. 48. "Vested." This term is defined to identify when vacation and sick leave costs are allowable. It is reasonable to define vested according to commonly accepted usage as it is defined in Webster's New Collegiate Dictionary.

Subp. 49. "Working capital loan." This definition is necessary to clarify which loans are subject to the provisions in part 9553.0035. subpart 9. It is reasonable to distinguish these loans from capital debt since the purpose of these loans is to finance the facility's operating costs. This distinction has been used by the department in other reimbursement rules such as Minnesota Rules, parts 9549.0010 to 9549.0080.

Subp. 50. "Working capital interest expense." This definition is necessary to distinguish "working capital interest expense" from "capital debt interest expense". It is reasonable to make this distinction so that the interest expense limits in 9553.0035 subp. 9 can be properly applied.

IV. COST CLASSIFICATION AND ALLOCATION PROCEDURES - Part 9553.0030

Subpart 1. Cost Classification

Statement of Need:

Subpart 1 specifies what is meant by the classification of costs. The Department needs to have costs classified appropriately in order to:

- have costs reported uniformly by all facilities,
- determine whether they are allowable costs,
- determine the cost category to which costs belong for purposes of reimbursement and limit setting,
- interpret costs incurred by individual facilities, and
- accurately compare costs among facilities.

Direct identification of cost is necessary so that department auditors may make an independent assessment of the allocation or classification made by the facility.

Reasonableness:

Item A. To adequately assess costs for purposes of reimbursement, providers are required to record costs accurately in specific categories on a cost report. Direct identification of costs is the basis for classification. Costs that cannot be specifically classified to one or more cost category are necessarily classified to the administrative cost category, since their benefit is for the facility as a whole.

Item B. Generic supplies must be reported in the administrative category without any allocation. This enables department auditors to verify the classification of costs without unduly burdening facilities by requiring them to keep records showing how the costs of generic items should be prorated.

Item C. Compensation of individuals other than top management with duties in more than one facility or cost category is allocated to the various cost categories or facilities on the basis of time spent on duties in the various categories. A facility or provider group with 48 or fewer beds, may also allocate part of the salary of its top management personnel if the allocation is justified by the facility's records. A facility or provider group with more than 48 beds is considered one which requires full time top management and therefore allocation of the top management compensation is not allowed. It is reasonable to expect that 48 or fewer beds are likely to have top management working part-time. A facility or provider group with more than 48 beds is a complex operation financially and programmatically and thus requires the services of a full-time executive or the equivalent. In order that the facility not be overburdened by keeping a daily log, sampling methods can be used to estimate time spent in various activities.

General Justification

These methods for cost classification ensure that each provider recognizes expenses in a consistent manner. CFR 447.260 stipulates that the state must provide for the filing of uniform cost reports by each participating provider. This classification method provides the department with consistently prepared financial information from each provider for rate setting purposes. In order to establish effective and fair limits, facilities must be required to report costs in a uniform manner.

This method of cost classification is similar to that provided in previous ICF/MR reimbursement rules and in Rule 50, the nursing home rule. Therefore, the department and providers are familiar with this cost classification method.

Part 9553.0030 Subpart 2. Allocation of Personal Expenses for Owners Whose Primary Residence is in the Facility.

Statement of Need:

When the facility is also the primary residence of the owner, it is necessary to separate personal expenses from the facility's expenses because personal expenses are not reimbursable.

Reasonableness:

It is reasonable not to reimburse the owner's personal costs because the purpose of the rule is to reimburse the necessary cost of providing services to residents.

To separate personal expenses from facility costs, it is necessary to assign a portion of property costs and operating costs such as dietary, housekeeping and maintenance, to personal expenses. It is reasonable to be base the proportion assigned on the percentage of space devoted to personal use and on reasonable estimates of actual use of services or assets because this base directly relates to the actual benefits derived by the owner.

Part 9553.0030 Subpart 3. Cost Allocations for Other Services.

Statement of Need:

Reimbursement under this rule is provided only for ICF/MR services. Therefore, it is necessary to separate facility costs incurred in the provision of ICF/MR services from costs incurred for other than ICF/MR services.

Reasonableness:

The same cost classification principles established in subpart 1 and the proportional allocation procedures established in subpart 2 are used to separate out nonreimbursable costs for services not considered ICF/MR services. It is reasonable to use a similar principle and procedure to simplify preparation of reports to minimize confusion for providers and Department auditors, and to prevent the inadvertent loss of a cost or duplicate claim of a cost.

Part 9553.0030 Subpart 4. Central, Affiliated, or Corporate Office Costs.

Statement of Need:

To determine if costs associated with central, affiliated or corporate office costs are allowable costs of the facility, it is necessary to allocate the costs to specific cost categories for each facility. This allocation is necessary because rates are facility specific and only costs necessarily incurred to operate a facility are allowable. There is also a need to prevent cost shifting when one facility has exceeded its limits and another is not. This also prevents cost shifting between corporate operations of another type.

Reasonableness:

For nursing homes, Minnesota Statutes, require that "central or home office costs" be included within the cost category entitled "general and administrative costs." Additionally, salary expenses for required and some specified consultants in nursing homes may be allocated to the appropriate cost category for each facility. Since a number of owners have both ICFs/MR and nursing homes, since the same central office serves both types of facilities, and since the same Department auditors audit both it is reasonable to use the same allocation procedures for the ICFs/MR. To do otherwise in the absence of compelling differences in operation would be unnecessarily confusing.

Item A provides that central affiliated or corporate office salary expense for consultants required by law or regulation may be allocated to other cost categories but only to the extent that the salary expenses are directly identified by the facility. If a facility can identify direct costs for legally required consultants, it is reasonable that it be allowed to allocate these costs to the appropriate category so that an accurate picture of facility costs in various categories is maintained. Additionally, such allocation avoids inflating administrative costs which are subject to limits under part 9553.0050.

Item B applies to allocation of costs representing services of consultants not required by law in specific areas. Item B is intended to permit the allocation of the salaries of those individuals actually working in facilities even though their salaries, as a matter of convenience, are paid